

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

RODRIGUEZ A. BEMBO,

Plaintiff,

v.

COUNTY OF NIAGARA, OFFICER PHILLIPS,
OFFICER SHAVER, and SERGEANT KOLBE,

Defendants.

ORDER
13-CV-413LJV(HBS)

The plaintiff commenced this action by filing a complaint on April 26, 2013. See Docket Item 1. It was first assigned to Hon. John T. Curtin, but when Judge Curtin retired last year, the case was reassigned to the undersigned. At the time of the transfer, a motion for summary judgment by the defendants was pending. Docket Item 31.

After the Court granted several requests by the plaintiff for extensions of time to file responding papers, see Docket Items 34, 36, 39, & 41, the plaintiff filed responding papers on May 6, 2016, and May 9, 2016. Docket Items 42 & 43. The defendants filed a reply on May 13, 2016, see Docket Item 45, and, with the Court's permission, the plaintiff filed a sur-reply on June 12, 2016. Docket Items 48 & 49. On June 13, 2016, this Court heard oral argument and, at the Court's request, both sides filed additional papers. Docket Items 50, 51, & 58.

On July 25, 2016, this Court referred the matter to Magistrate Judge Hugh B. Scott for all pretrial matters, including those that a magistrate judge may hear and determine, see 28 U.S.C. § 636(b)(1)(A), and those that a magistrate judge may hear and thereafter file a report and recommendation, see 28 U.S.C. 636(b)(1)(B). After deciding a discovery issue that had arisen, see Docket Item 63, on August 31, 2016, Judge Scott issued a Report and Recommendation. Docket Item 64. In it, he recommended that the defendants' motion for summary judgment be granted with respect to the plaintiff's first, third and fourth claims; with respect to the second claim, Judge Scott recommended granting the summary judgment motion only as to the County of Niagara and denying it as to the individual defendants. Neither side objected to the Report and Recommendation, and the time to do so now has expired. See 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(2).

A district court may accept, reject, or modify, in whole or in part, the findings or recommendation of a magistrate judge. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). A district court must conduct a *de novo* review of those portions of a magistrate judge's recommendation to which objection is made. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). But neither 28 U.S.C. § 636 nor Federal Rule of Civil Procedure 72 require a district court to review the recommendation of a magistrate judge to which no objections are addressed. See *Thomas v. Arn*, 474 U.S. 140, 149-50 (1985).

Although not required to do so in light of the above, this Court nevertheless has reviewed Judge Scott's Report and Recommendation as well as the parties'

submissions. Based on that review and the absence of any objections, the Court accepts and adopts Judge Scott's recommendation to grant the defendants' motion for summary judgment with respect to the first, third, and fourth claims in the complaint; to grant the motion by defendant County of Niagara to dismiss the second claim as well; and to otherwise deny the defendants' motion for summary judgment.

For the reasons stated above and in the Report and Recommendation, the defendants' motion for summary judgment is granted in part and denied in part; the first, third, and fourth claims are dismissed against all defendants; the second claim is dismissed only against defendant County of Niagara; and the defendants' motion for summary judgment is denied only as to the plaintiff's second claim against defendants Phillips, Shaver, and Colby. This matter is referred back to Judge Scott consistent with the Order of Referral already in place. See Docket Item 61.

IT IS SO ORDERED.

DATE: March 30, 2017
Buffalo, New York

s/Lawrence J. Vilardo
LAWRENCE J. VILARDO
UNITED STATES DISTRICT JUDGE